

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7380 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SIDDIQ ISMAIL SANDHI

Versus

DISTRICT MAGISTRATE

Appearance:

MR YATIN SONI for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 28/03/2000

ORAL JUDGEMENT

#. District Magistrate, Rajkot passed an order on August 17, 1999, in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detainee under the provisions of the PASA Act.

#. The detaining authority took into consideration five offences registered against the detainee under the Bombay Prohibition Act. The authority also considered the statements of anonymous witnesses and exercising privilege under section 9(2) of the PASA Act, did not disclose the identity of the witnesses. While considering the less drastic remedies, the authority considered the possibility of resorting to proceeding under section 57 of the Bombay Police Act and came to a conclusion that the petitioner-detainee is required to be detained under the PASA Act in order to immediately prevent him from pursuing his bootlegging activities which are detrimental to public order.

#. The petitioner challenges the order of detention on various grounds. Mr. Yatin Soni, learned advocate appearing for the petitioner has however, relied on the ground of consideration of irrelevant material while considering the less drastic remedies. In support of his argument, he has relied upon the judgment in the case of Bhupatbhai Ramjibhai Vasava v. District Magistrate, Bharuch & others, reported in 1992 (2) GLH 350. He submitted that the petition maybe allowed and the impugned order be quashed.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Having regard to the facts of the case in light of the contentions raised before this Court, it appears that the offences which are registered against the detainee under the Bombay Prohibition Act are pending trial. To put it differently, there are no convictions to the credit of the detainee. Despite this, the detaining authority has taken into consideration the possibility of resorting to proceedings under section 57 of the Bombay Police Act which could not have been considered legitimately for the reason that the facts of the case did not permit so and therefore, the consideration of possibility of resorting to proceedings under section 57 of the Bombay Police Act can be said to be the consideration of an irrelevant and extraneous matter. This would adversely affect the order of detention as has been held in the case of Bhupatbhai Ramjibhai Vasava v. District Magistrate, Bharuch & others reported in 1992 (2) GLH 350, the petition deserves to be allowed on this ground.

#. In view of the above discussion, the petition is allowed. The impugned order of detention dated 17th

August, 1999 is hereby quashed and set aside. The
detenue - Siddiq Ismail Sandhi is hereby ordered to be
set at liberty forthwith, if not required in any other
mater. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-